

139-061

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EASEMENT AGREEMENT

DOCUMENTARY
SURCHARGE
PAID \$3.00

THIS EASEMENT AGREEMENT made this 26th day of September, 1986, by and between THE DELAWARE RIVER AND BAY AUTHORITY, a bi-state agency established by Compact between the States of New Jersey and Delaware (the "Bay Authority") and THE DELAWARE SOLID WASTE AUTHORITY, an instrumentality of the State of Delaware (the "Solid Waste Authority").

WHEREAS, the Solid Waste Authority, in order to fulfill its statutory goals as set forth in Chapter 64 of Title 7 of the Delaware Code, has determined that the construction and operation of an energy generating facility (the "EGF") which will be capable of producing electricity and steam from the combustion of municipal solid waste and refuse derived fuel, is desirable; and

WHEREAS, the Solid Waste Authority has entered into an agreement with Crouse Recovery of Delaware, Inc. ("CRD") for the design, construction and operation by CRD of an EGF and the "Steamline" (as hereinafter defined); and

WHEREAS, for the construction and operation of an EGF, the Solid Waste Authority has leased to CRD certain of its property located on a 10.161-acre tract of land located off of Lambson's Lane in Pigeon Point, Delaware, which land is owned by the Solid Waste Authority ("the Leasehold Interest"); and

WHEREAS, CRD, with the approval of the Solid Waste Authority, has entered into an agreement with ICI Americas, Inc. ("ICI") for the delivery of steam by the "Steamline" (as hereinafter defined) from the Leasehold Interest and terminating at or near the boundary of lands owned by ICI located on the southerly side of the Delaware Memorial Bridge (the "ICI Property"); and

WHEREAS, the Bay Authority is the owner of a portion of the lands situated between the Leasehold Interest and the ICI Plant and has leased a portion of such lands to the Solid Waste Authority (the "Leased Land"); and

WHEREAS, construction of the ECF requires that CRD construct, operate, and maintain the Steamline over the lands of the Bay Authority hereinafter identified; and

WHEREAS, the Bay Authority has agreed to grant the Solid Waste Authority an easement for the purpose of permitting the construction, operation and maintenance of the Steamline, conditional upon compliance with the terms and conditions of this agreement.

NOW, THEREFORE, the parties hereto, for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid to the Bay Authority and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby agree as follows:

1. Grant of Easement. The Bay Authority does hereby grant and convey to the Solid Waste Authority, and

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its successors an easement, right and privilege to install, construct, make, maintain, operate and remove at any time, a pipeline to transfer steam from the Leasehold Interest to the ICI Property, with all accessories, appurtenances and appliances attached thereto or utilized in connection therewith (the "Steamline"), together with the right of ingress and egress to and from the same, on, over and through that certain strip of land described in Exhibit "A-1" attached hereto and shown on a plan attached hereto as Exhibit "A-2" as the same may be modified from time to time in accordance with Paragraph 3 below (the "Easement Area"). The easement granted hereby shall continue in full force and effect in accordance with the terms hereof for so long as the BGF is operated on the Leasehold Interest notwithstanding the termination of the lease between the Bay Authority and the Solid Waste Authority for the Leased Land.

2. Use of Easement Area. The Easement Area shall be used for the sole purpose of constructing, repairing, maintaining, operating, inspecting, replacing, removing or relocating within the Easement Area the Steamline, together with such rights of entry upon, passage over, storage of materials and equipment upon and depositing of excavated earth, on the Easement Area as may be necessary during such construction, repair, maintenance, inspection, operation, replacement, relocation or removal of the Steamline; provided, however, to the extent not inconsistent

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with the terms of this Agreement, that all activities by the Solid Waste Authority, its successors and assigns, shall be subject to and conducted in full compliance with the Bay Authority's "Rules and Regulations for Utility Crossings" as amended from time to time, and made a part hereof, and the use by the Solid Waste Authority or its assignee of the Easement Area and the construction of the Steamline shall comply with a Memorandum Agreement of even date herewith between the Bay Authority and the Solid Waste Authority (a copy of which is attached hereto as Exhibit B).

3. Modification of Easement Area. The Bay Authority hereby reserves the right to alter the Easement Area by substituting different lands of the Bay Authority therefor upon its determination that (i) the Easement Area is the most feasible location for a facility of the Bay Authority and (ii) the Steamline, even if relocated within the Easement Area, will materially interfere with the intended use and operation of such facility. Prior to exercising its right to relocate the Easement Area, the Bay Authority shall consult with the Solid Waste Authority and/or its assignee to review and discuss the need to relocate the Easement Area and the consequent relocation of the Steamline. If, after such consultation, the Bay Authority determines that the relocation of the Easement Area is necessary, it shall give written notice thereof to the Solid Waste Authority and its assignee which notice shall also identify the lands

the Bay Authority intends to make available. Such substituted lands must be adequate to permit the relocation, construction, operation and maintenance of the Steamline. The notice shall be given to the Solid Waste Authority and its assignee within a reasonable time, sufficient to permit the completion of any and all necessary construction or additions to the Steamline and the placement of the Steamline, as relocated, in commercial operation prior to the cessation of use of the Steamline and termination of the prior Easement Area as in existence before relocation. Under no circumstances whatsoever shall the Solid Waste Authority or its assignee be required to cease full commercial operation or use of the Steamline until the portion thereof to be relocated has been placed in commercial operation. Any relocation of the Steamline pursuant to this paragraph shall be at the sole expense of the Solid Waste Authority, its successors or assigns.

4. Benefit of Easement. The rights and privileges in the Easement Area being granted hereunder shall benefit the EGF and shall run with the Leasehold Interest and to the Solid Waste Authority, its successors and assigns, subject to provisions of Paragraphs 6 and 7 herein.

5. Maintenance and Restoration. The Solid Waste Authority and, if the Solid Waste Authority assigns its rights hereunder, its assignee, shall maintain the Easement Area so that it will, at all times, be a safe area in which to work and so that it will not interfere with or adversely

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impact the Bay Authority's operation of its facilities contiguous to or near the Easement Area. At such time as the Solid Waste Authority or its assignee, if any, determine, in their sole discretion, that operation of the Steamline is not economical or feasible, the Solid Waste Authority or, if the Solid Waste Authority has assigned its rights hereunder, its assignee, shall, at its sole cost and expense, remove the Steamline from the Easement Area and, to the greatest extent practical, restore the Easement Area to its original condition, unless otherwise agreed to by the Bay Authority.

6. Insurance. As a condition of the continued use of the Easement, the Solid Waste Authority, or, if the Solid Waste Authority assigns its rights hereunder, its assignee, shall maintain in full force and effect, at its expense, comprehensive liability insurance in an amount reasonably deemed adequate by the Bay Authority which amount initially shall be \$1,000,000. The Bay Authority shall be named as an additional insured in all such policies of insurance. In the event that such insurance is not obtainable then the Solid Waste Authority or its assignee shall provide such other security as the Bay Authority shall reasonably deem satisfactory to it.

7. Indemnification. The Solid Waste Authority and, if the Solid Waste Authority assigns its rights hereunder, its assignee, shall indemnify and hold the Bay Authority harmless against all losses, damages, costs,

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expenses, claims and liabilities arising out of or resulting from the construction, operation, maintenance, relocation or removal of the Steamline.

8. Recordation. This Easement Agreement or an appropriate memorandum thereof shall be recorded by the Solid Waste Authority or its assigns at its sole expense in the Office of the Recorder of Deeds in and for New Castle County.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year aforesaid.

ATTEST:

James Williams
General Manager
Title

John Decker
Title

THE DELAWARE RIVER AND BAY AUTHORITY

BY: *William J. Miller* (SEAL)
Executive Director
Title

THE DELAWARE SOLID WASTE AUTHORITY

BY: *K.C. Worley* (SEAL)
General Manager
Title

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STATE OF DELAWARE)
) SS.
NEW CASTLE COUNTY)

BE IT REMEMBERED that on this 26th day of September, 1986, personally came before me, the Subscriber, a Notary Public in and for the State and County aforesaid, William J. Mullen, Jr., the Executive Director of Delaware State Lottery, known to me to be such and he acknowledged this Agreement to be the act and deed of said corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

Eleanor J. Stuckey
Notary Public

STATE OF DELAWARE)
 KENT) SS.
~~NEWCASTLE~~ COUNTY)

BE IT REMEMBERED that on this 24th day of September, 1986, personally came before me, the Subscriber, a Notary Public in and for the State and County aforesaid, N. C. Vasuki, the General Manager of the Delaware State Lottery, known to me to be such and acknowledged this Agreement to be the act and deed of said corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

Ann D. Dard
Notary Public



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**VANDEMARK
& LYNCH, INC.**
ENGINEERS • PLANNERS • SURVEYORS

4305 MILLER RD./PO BOX 2047
WILMINGTON, DE 19802(302) 784-7835

Project No. 15850
File No. 23177-M
Revision #2

February 19, 1986

Description of a portion of a Utility Easement through lands of the State of Delaware (Delaware River and Bay Authority) I-295 and U.S. Route 40, New Castle Hundred, New Castle County, Delaware.

ALL THAT CERTAIN tract, piece or parcel of land being a utility easement through lands of the State of Delaware (Delaware River & Bay Authority) situated at I-295, U.S. Route 40 and Conrail-New Castle Cut-Off, New Castle Hundred, New Castle County, Delaware and shown on a plat prepared by Vandemark & Lynch, Inc., Consulting Engineers, Planners, and Surveyors Wilmington, Delaware dated January 18, 1985, Drawing number 23177-M last revised February 19, 1986;

BEGINNING at a point on the southeasterly side of a 100 foot wide right of way for Conrail (New Castle Cut-Off), said point being a corner for lands now or formerly of the Delaware Solid Waste Authority and being distant measured along the said southeasterly side of the 100 foot wide Conrail right of way, the two following described courses and distances from the southwesterly side of Lambson's Lane extended at 60 feet wide:

- 1) Southwesterly by a curve to the right at a radius of 5779.60 feet, an arc distance of 2088.36 feet to a point of tangency for said curve and
- 2) South 34°-46'-29" West, 1334.12 feet to the point of Beginning;

THENCE from said point of Beginning along the southwesterly line of said lands now or formerly of Delaware Solid Waste Authority, South 79°-53'-05 East, 55.02 feet to a point;

THENCE along the southeasterly and southwesterly side of the said utility easement through lands leased to New Castle County by the Delaware River and Bay Authority, the two following described courses and distances:

- 1) South 34°-46'-29" West, 490.00 feet to a point; and
- 2) North 55°-13'-31" West, 50.00 feet to a point on the said southeasterly side of the 100 foot wide right of way for Conrail;

THENCE THEREBY, North 34°-46'-29" East, 467.04 feet to the point and place of Beginning,

CONTAINING within said metes and bounds 0.55 acres of land being the same more or less...

KWD/jbk

Checked By 1/2

EXHIBIT "A-1"

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Recorder of New Castle County



Wilmington, Delaware

MEMORANDUM

LEO J. DUGAN, JR.
RECORDER

TO: Members of the Delaware Bar Association
FROM: Leo J. Dugan, Jr., Recorder of Deeds
RE: House Bills 590 & 703 - Fee Increases
DATE: July 11, 1986

Please take notice that House-Bills-590-&-703 will increase the fees charged by the Recorder in all three Counties.

H.B. 703 is a Documentary Fee placed upon all documents recorded in the Recorder of Deeds Office. The amount charged for this fee is \$3.00 per Document effective August 22, 1986. Checks should be made payable to Leo J. Dugan, Jr., Recorder, Document Fee Account.

** This fee must be on a Special Check **
Effective September 1, 1986, H.B. 590 increase the fees charged under the UCC Act. The fees are as follows:

Filing & Continuations	\$20.00
Terminations	\$10.00
Assignments	\$20.00
Information from Filing Officer	\$10.00

LEO J. DUGAN, JR. Recorder

8.5

OCT 7 1986

RECD FOR RECORD